

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
SALVADOR DE JESUS REYES, *on behalf of himself* :
and all others similarly situated, et al., :
:

Plaintiffs, :

21-CV-7218 (JMF)

-v- :

ORDER

BENCHMARK CONTRACTING INC. et al., :

Defendants. :
:
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JESSE M. FURMAN, United States District Judge:

The Complaint in this action was filed on August 27, 2021. *See* ECF No. 1. On December 3, 2021, the Court ordered Plaintiffs to show good cause in writing why service of the summons and Complaint was not made within the 90 days prescribed by Rule 4(m) of the Federal Rules of Civil Procedure — or, if Plaintiffs believed service had been made, to demonstrate when and in what manner service *was* made within the 90 days. *See* ECF No. 16. The Court notified Plaintiffs that if they did not show good cause — or file anything — by December 17, 2021, the Court would dismiss the Complaint. *Id.* Plaintiffs filed proof of service as to Defendant Benchmark Contracting Inc. (“Benchmark”), *see* ECF No. 17, and explained that they had been unable to serve the individual Defendants Alan Rafferty and Andrew Collins, *see* ECF No. 18. The Court extended the deadline for service as to those Defendants to January 7, 2022. *See* ECF No. 19. To date, however, Plaintiffs have not filed proof of service as to Defendants Rafferty and Collins. Accordingly, the Complaint is DISMISSED without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure as to those Defendants.

Separately, Defendant Benchmark Contracting Inc. was served with the Complaint on December 1, 2021, and proof of service was filed with the Court. *See* ECF No. 17. To date, Benchmark has neither answered the Complaint, nor otherwise appeared in this action. In light of the foregoing, it is hereby ORDERED that any motion for default judgment shall be filed, in accordance with the Court’s Individual Rules and Practices for Civil Cases (available at <https://nysd.uscourts.gov/hon-jesse-m-furman>), no later than **February 1, 2022**. Defendant shall file any opposition to the motion for default judgment no later than **February 8, 2022**. Benchmark is cautioned that a corporation may appear in federal court only through licensed counsel, and “where a corporation repeatedly fails to appear by counsel, a default judgment may be entered against it.” *Grace v. Bank Leumi Tr. Co. of N.Y.*, 443 F.3d 180, 192 (2d Cir. 2006) (internal quotation marks omitted).

If a motion for default judgment is filed, it is further ORDERED that Benchmark appear and show cause before this Court, Courtroom 1105 of the Thurgood Marshall Courthouse, 40

Centre Street, New York, New York, on **February 17, 2022, at 4:15 p.m.**, why an order should not be issued granting a default judgment against Benchmark. No later than Thursday the week prior to that date, Plaintiffs must file the proposed default judgment order electronically, using the ECF Filing Event “Proposed Default Judgment,” for the Clerk’s approval.


In the event that Benchmark appears or opposes the motion for default judgment prior to that date, the parties shall prepare to treat that conference as the initial pretrial conference. That is, if Benchmark appears, opposes the motion, or seeks a *nunc pro tunc* extension of time to respond to the complaint, then the parties shall follow the pre-conference procedures specified in the Court’s Order of August 30, 2021, including by submitting a joint letter addressing certain topics and a proposed case management plan no later than the Thursday prior to the conference and by participating in an early settlement conference with the assigned Magistrate Judge at least two weeks prior to the initial pretrial conference. *See* ECF No. 13.

It is further ORDERED that Plaintiffs serve Benchmark via overnight courier (1) with a copy of this Order within **one business day of the date of this Order**; and (2) with a copy of the motion for default judgment and all supporting papers within **one business day** of the date of any such motion. In each case, within **two business days of service**, Plaintiffs must file proof of such service on the docket.

The Clerk of Court is directed to terminate Alan Rafferty and Andrew Collins as Defendants.

SO ORDERED.

Dated: January 18, 2022
New York, New York



JESSE M. FURMAN
United States District Judge